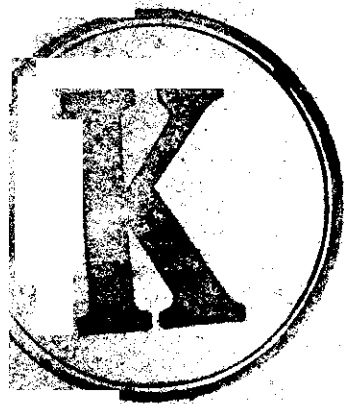




1952.

File No.

O. Tenancy/5

Legal Dept.

A BRANCH

Subject:— Opinions under the
Bombay Tenancy and
Agricultural Lands
Act 1948

2/37
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File No.

O. Tenancy/54

C O N T E N T S.

Legal Department File No. 0. Tenancy/52.

Sr. No.	R.I./O.No.	Subject	Pages.
		Opinions under the Bombay Tenancy and Agricultural Act <i>Lands Act</i> 1948.	
1.	<u>2067</u> <u>9/2/52.</u>	Whether it would be competent for Mamlatdar in his capacity of the Manager of the estate to apply under sub-rule 3 of rule 5 for fixation of the amount of rent.	1.
2.	<u>3681</u> <u>7/3/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 --- Section 4.	3.
3.	<u>3489</u> <u>8/3/52.</u>	Whether the application pending before the Mamlatdar or proceedings pending before the Collector for possession of ~~an~~ land by the landlord after termination of tenancy before the B'bay Tenancy and Agrl. Lands Act came into operation should be disposed of	5-7.
4.	<u>758</u> <u>11/1/52.</u> <u>3490</u> <u>5/3/52.</u>	Since the lands ~~have~~ were leased out for ~~period~~ for five years from 5/4/43 under a registered deed the notice under section 7(1) asking for possession by 1/4/48 ~~is~~ . before the expiry of the period is not proper and the landlord is not entitled to possession.	9-11.
5.	<u>548</u> <u>9/1/52.</u> <u>3491</u> <u>8/3/52.</u>	Whether Govt. can exercise revisional powers in the matters and set aside the orders of the ~~T.A.A.~~ and P.O. on the ground that the notice under section 7(1) of the Bombay Tenancy Act 1939 given by the landlord was not proper.	13-15.
6.	<u>3953</u> <u>14/3/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 section 64 - Registration of Sale deed after coming into force of	17.
7.	<u>4375</u> <u>22/3/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 -- ~~has~~ come into operation on the date of the application ~~the~~ the proceedings would be governed by it ~~s~~ and the Collector will have no power to entertain the appeal.	19-21.

C O N T E N T S.

Legal Department File No. O.Tenancy/52.

Sr. No.	R.I./O.No.	Subject	Pages.
8.	<u>5850</u> <u>18/4/52.</u>	Whether the order passed by B.R.T. has held that the title does not pass on until registration the date of registration is relevant to determine the date of sale. B'bay Tenancy and Agrl. Lands Act 1948.	23.
9.	<u>6467</u> <u>26/4/52.</u>	Whether the direction of Govt. to correct rent at the rates fixed by the Raja of Kurundwad by his order dated 4/1/45 are legally in order.	25.
10.	<u>8194</u> <u>16/5/52.</u>	Whether section 72A it would be competent to the Collector of Kolhapur to trans a case pending on the file of Mamlatdar of Miraj should continue to hear and decide the case and that the transfer of the villages to Kolhapur Distt. will not affect the pending proceedings.	27.
11.	<u>3680</u> <u>7/5/52</u>	B'bay Tenancy and Agricultural Lands Act 1948 -- Section s 64 and 84.	29.
12.	<u>3714</u> <u>10/5/52.</u>	B'bay Tenancy and Agricultural Land-s Act 1948 .. section 64, B'bay Prevention of Fragmentation and consolidation of Holdings Act 1947 -- Section 9.	31-33.
13.	<u>3850</u> <u>11/5/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 --- Section-s 54 & 56. ~~12/5/52~~	35.
14.	<u>3875</u> <u>13/5/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 -- Section 12(4) Retrospective effect	37.
15.	<u>3908</u> <u>13/5/52.</u>	Chitalnar Mahpada Village Sale of Inami rights -- B'bay Tenancy and Agrl. Lands Act 1948. sections 63 and 64	39.
16.	<u>4052</u> <u>17/5/52.</u>	Whether the Collector's order permitting the lease for a period of three years is lawful & Section 5.	41.
17.	<u>4162</u> <u>18/5/52</u>	B'bay Tenancy and A.L. Act 1948. Sections 9 and 14(1) Pasayats Land Commutation of service into cash.	43.

C O N T E N T S.

Legal Department File No. O.Tenancy/52.

Sr. No.	R.I./O.No.	Subject	Pages
18.	<u>7644</u> <u>18/4/52.</u> <u>6692</u> <u>29/4/52.</u>	Renewal of Leases at agricultural Land at Puntamba Tal - Kopergaon-Dist. Ahmednagar.	45-47
19.	<u>8902</u> <u>28/5/52.</u>	B'bay Tenancy Act 1938. Section 28- Whether awarding of ~~costs~~ of the R.D. can set aside the Collector's order.	49-53.
20.	<u>9042</u> <u>30/5/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 -- Section 2(2A) personal Assistant to the Collector	55.
21.	<u>9820</u> <u>12/6/52.</u>	B'bay Tenancy and Agrl.Lands Act 1948 Sec.63(1) (a) Transfer of lands to Anandnagar Co-op.Housing Society by its members.	57.
22.	<u>11413</u> <u>10/7/52.</u>	Whether the advisability of seeking an earliest opportunity to obtain an authoritative decision of the High Court by filling a test case can be obtained.	59.
23.	<u>12601</u> <u>26/6/52.</u> <u>11495</u> <u>11/7/52.</u>	B'bay Tenancy and Agrl.Lands Act does not prohibit exchange of land to an agriculturist and as such there would be nothing objectionable in the transaction of the present case.	61-65.
24.	<u>4016</u> <u>15/3/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 -- Section 14(1) Notice of termination of tenancy duration	67.
25.	<u>11193</u> <u>7/7/52.</u>	Civil Revision application 444/1952 challenged in -- Revision Application against the order dated 17.5.51 of the Collector of South Satara.	69.
26.	<u>12667</u> <u>31/7/52.</u>	Whether the presumption made by R.D. is correct. Re. That the Asstt. Collector's order directing assumption of the management of the land is correct and should not be set aside.	71.
27.	<u>13206</u> <u>11/8/52.</u>	That the payment of the cash balance to the estate holders cannot be withheld as requested by the claimant since the management has been withdrawn	73.
28.	<u>8753</u> <u>26/8/52.</u>	Whether in a case where the lease itself provides that on failure to pay rent the lessor will be entitled to re-enter on the land it is necessary to give notice for the termination of the lease.	75.
Rele.N.S.			

C O N T E N T S.

Legal Department File No. O.Tenancy/52.

Sr. No.	R.I./O.No.	Subject	Pages.
29.	<u>10694</u> <u>27/6/52.</u>	Whether it is necessary for the Mahalkarni to reinvestigate all the claims which were decided by the Collector under the Act to prepare the Scheme	77.
30.	236-L	To amend the clause (c) of sub-section (I) of section 88 of the B'bay Tenancy and Agricultural Land Act 1948.	79.
31.	<u>15114</u> <u>25-7-52.</u> <u>13.4.61</u> <u>18/8/52.</u>	Request for possession of lands under section 7(1) of the Act has been set at naught by the order of the D.J. Satara North in C.A. No. 425/1950.	81.
32.	<u>14046</u> <u>29/8/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 -- Section 48 Assumption of management of Bhatsanand Sonari Villages.	83-85.
33.	<u>14118</u> <u>29/8/52.</u>	Whether the Collector is competent to issue a direction that cess recovered unauthorisedly by the Thakor: should be refunded to the tenants and that if the Thakor fails to carry out this direction he may be threatened with action under section 81 of the Act.	87.
34.	<u>20023</u> <u>26/8/52.</u> <u>14484</u> <u>6/9/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948 Section 72.	89.
35.	<u>19869</u> <u>22/8/52.</u> <u>14638/A</u> <u>9/9/52.</u>	Whether the order passed by the R.D. can be reconsidered -- Re-granting possession of certain lands to the applicants landlord from their tenants on the grounds of personal cultivation and that the tenants had done acts destructive and injurious to the land.	91.
36.	<u>8691</u> <u>24/8/52.</u>	Whether the Court of Wards can be directed to refund to Shri Dhirajlal the excess amount paid to him.	93.
37.	<u>23158</u> <u>4/10/52.</u>	B'bay Tenancy and Agricultural Lands Act, Dharwar. Sardar Shri L.N. Heblikar's estate Tal - Dharwar. Termination of management over under section 51.	95.

C O N T E N T S.

Legal Department File No . O. Tenancy/52.

Sr. No.	R.I./O.No.	Subject	Pages.
38.	<u>14839/B</u> <u>11/9/52.</u>	Whether the B'bay Tenancy and Agrl. Lands Act 1948 should be amended to provide that Govt. should have revisional powers to revise the orders passed by the Mamlatdars fixing reasonable rent under section 12 or <i>by</i> the Collector in appeal.	97.
39.	<u>15102</u> <u>3/7/52.</u>	Whether the action is feasible against the defaulters -- as the said rule 4 does not expressly empower the Talathi for promulgate an order prohibiting removal of the <i>crop and</i> such action under section 188 I.P.C. would not be feasible.	99.
40.	<u>12223</u> <u>21/6/52.</u> <u>16443/A</u> <u>7/10/52.</u>	Whether the lower rate of ~~xx~~ maximum rent fixed under section 6(2) of the B'bay Tenancy and Agricultural Lands Act 1948 in G.N. R.D. No. 1109/49 (a) dated the 29th Feb/1st March 52 would be applicable with effect from the tenancy <i>year</i> 52-53.	101.
41.	<u>16694 /A</u> <u>10/10/52.</u>	B'ba, Tenancy and Agrl. Lands Act 1948 -- Section 63 & 64.	103.
42.	<u>15551/A</u> <u>22/9/52.</u>	Whether the claim of Shri Parikh is within the period of limitation and he is entitled to the full amount sanctioned by the Manager or only Rs. 2500/-. The manager has got powers to <i>revise</i> the orders or whether the Collector can revise it when the liquidation scheme would be submitted for his sanction under section 56 of the Act.	105-111
43.	<u>16817/A</u> <u>15/10/52.</u> <i>11/10/52</i>	Whether the lands assigned or unassigned are lands held on lease from the Crown within the meaning of section 88(1)(a) of the B'bay Tenancy and A.L. Act 1948	113.

C O N T E N T S.

Legal Department File No. O. Tenancy/52.

v

Sr. No.	R.I./O.No.	Subject	Pages.
44.	<u>16818/A</u> <u>11/10/52.</u>	Whether the tenant holding the lands ~~of~~ under the a lease the Court receiver is entitled to the ~~protection~~ protection of the Bombay Tenancy and A.L. Act.	115.
45.	<u>17003/A</u> <u>14/10/52.</u>	Whether the sale can be cancelled by the Collector in his capacity as the Manager of the estate.	117-119.
46.	<u>17054</u> <u>15/10/52.</u>	B'bay Tenancy and Agricultural Lands Act 1948. Section 63 --- Raha Agricultural Farm Ltd.	121.
46.	<u>21517/A</u> <u>20/12/52.</u>	Whether the B.R.T. has got special jurisdiction though the High Court has already given the judgment.	123.
47.	<u>19499/A</u> <u>21/11/52.</u>	B'bay Tenancy and Agricultural Lands Act 1943 -- section 6(2)	125.
48.	<u>20552/A</u> <u>8/12/52.</u>	B'bay Tenancy Act 1939 -- Section 28.	127.
49.	<u>21524/A</u> <u>20/12/52.</u>	B'bay Tenancy and Agricultural Lands Act 1943 -- Section 65 Palm tree plantations.	129-131.
50.	<u>18845/D</u> <u>12/11/52.</u>	Whether the Govt. may allow to appear in the proceedings if Govt. is agreeable then there would be hardly any justification for making distinction between Advocates and Pleaders.	133.
51.		B'bay Tenancy and A.L. Act 1948. Administration of section 65 of ----	135.
52.	<u>20214/A</u> <u>2/12/52.</u>	Whether the tenant should be put in possession of the land with permission to remove ~~crops~~ crops for the current year ~~tenancy~~ can be supported by the provisions of the Tenancy Act.	137.

In 38 Bom. 653 it is laid down that where the law creates a limitation and the party is disabled to conform to that limitation without any default in him and he has no remedy over the law will ordinarily excuse him (See R.L.A.'s Opinion No. 15003, dated 20th September 1951). Applying that principle to the present case the period during which the High Court interim injunction was in force will have to be excluded for the purpose of computing the limitation under rule 5(3) of the Bombay Tenancy & Agricultural Lands Rules, 1949. The view taken by Revenue Department is correct.

Sd.....S/Z.

Additional Secretary to Government.

U.R. to R.D.No. 2067 , dated, 9th February 1952.

DYR.

22/6

50.

Bombay
Tenancy and
Agricultural
Lands Act.
1948.
 Section 4.

It is undisputed that the tenant was given a lease of the land for a period of 2 years from 13-7-1947 and by the time it expiredⁿ the Bombay Tenancy and Agricultural Lands Act, 1948, had come into operation. The lessee could, therefore, be deemed to be lawfully cultivating the land within the meaning of section 4 of that Act and, consequently, he cannot be evicted except as provided under that Act. The view taken by the Collector that the lessee was holding the land as a licensee in view of the fact that the Deputy Regional Commissioner had granted a stay, does not appear to be correct. As stated by the Mamlatdar in his report to the Collector at page 57 of the file the practice in the Jaghir estate was that agriculturists used to be given waste land on a two-year lease and they thereupon used to get a right to continue as tenants till they liked, and the Jahagirdar could not evict them against their will. The Jahagirdar wanted to evict the tenant on the ground that the tenant was bound to surrender possession of the land when he started auction proceedings for the permanent disposal of the land. The Lessee approached the Deputy Regional Commissioner requesting that the auction be stayed and the land be granted to him permanently on his paying nazarana according to the practice then prevailing. The Deputy Regional Commissioner ordered the auction proceedings to be stayed. This order of the Deputy Regional Commissioner cannot be construed as terminating the lease prior to the expiry of the period and continuing the tenant as a licensee. In view of these circumstances it appears that the Collector was not within his rights when he evicted the tenant and restored possession to the Jahagirdar. The order of the Collector may, therefore, be set aside, as the action taken by him appears

appears to be one under the Bombay Land Revenue Code.

Sd/.....7/3.

Additional Secretary to Government.

U .R. to R.D.No. 3681, dated the 7th^March 1952.

DYR.

22/6.

5e.

The only point for consideration is how ^{the} application ~~the~~ pending before the Mamlatdar or proceedings pending before the Collector for possession of land by the landlord after termination of tenancy, before the Bombay Tenancy and Agricultural Lands Act came into operation should be disposed of.

The Bombay Revenue Tribunal has taken the view that any appeal or application against the decisions of the Mamlatdars or Collectors in such proceedings could not be entertained by it for want of jurisdiction, whereas the Advocate General has taken the view that the B.R.T. will have jurisdiction. Apart from this conflict of opinion, it is apparent that the proceedings pending before the Mamlatdar or the Collector for possession of the land after termination of tenancy, should under the Bombay Tenancy Act, 1939, be deemed to be proceedings under the Mamlatdars Courts Act. There appears to be no dispute about this legal position. In Civil Application No. 274 of 1941 the High Court has recently taken the view that these proceedings being proceedings under the Mamlatdars Court Act, the High Court alone will have jurisdiction to entertain any revision application against the order of the Collector passed under the Mamlatdars Courts Act and Government has no jurisdiction. It is, therefore, apparent that when the B.R.T. declines jurisdiction, and the High Court has held that Government has no jurisdiction, it would follow that the proceedings for recovery or restoration of possession of the land from a tenant after the termination of the lease initiated under the Bombay Tenancy Act, 1939, being proceedings under the Mamlatdars Court Act, the High Court alone will have jurisdiction. Consequently, the proceedings pending before the Mamlatdar under the Mamlatdars Courts Act for possession should be proceeded with under that

Act and a revision application against the order ultimately passed by the Mamlatdar will lie to the Collector under that Act, and the aggrieved party may thereafter approach the High Court for relief against the order of the Collector. The Circular No. 5322/45 dated 17th March 1951 issued by Government should be cancelled and instructions may be issued to the Mamlatdar and Collectors to proceed with the pending proceedings for recovery or restoration of possession of lands by landlords after termination of the lease as provided in the Mamlatdars' Court Act and that such proceedings should be regulated by the provisions of that Act and the High Court alone will have jurisdiction to entertain any revision application and neither the B.R.T. nor Government will have any jurisdiction in the matter.

Sd/.....3/3.

Additional Secretary to Government.

U.R. to R.D.No. 3499, dated the 3rd March 1953.

DYR.

22/6.

50.

R.I.No. 758 dated 11-1-1952.

2. It appears that the Bombay Revenue Tribunal has rejected, on the ground of jurisdiction, a revision application filed by one Shri T.M.Potnis (Landlord) against the order of the Collectors of Satara North dated 30-7-1949, setting aside the order of the Mamlatdar, Satara, dated 27-13-1948 granting the landlord's prayer for possession of S.Nos. 153/3, 175 and 277 of ^{Asphal} Asphal or personal cultivation on the ground that he had duly terminated the tenancy as required by section 7(1) of the Bombay Tenancy Act, 1939, and on the rejection of his application, Shri Potnis has approached Government in revision under section 28 of the said Act. The R.D. considers that since the lands were leased out for a period of five years from 5-4-1943 under a registered deed, the notice under section 7(1) asking for possession by 1-4-1948 i.e. before the expiry of the period is not proper and therefore the landlord is not entitled to possession. The R.L.A. is requested to advise whether the R.D. view is correct.

SDA/ 27/2.

U.R. to R.D.No. 3490/343-52.

DYR.

22/6.

50.

11.

Local Department.

Attention of the Revenue Department is invited to the opinion in the linked case. As stated therein, Government is not competent to entertain revision applications after they are rejected by the Bombay Revenue Tribunal on the ground of jurisdiction. Therefore, the point raised by the Revenue Department needs no consideration.

Sd/.....3/3.

Additional Secretary to Government.

U.R. to R.D.No. 3490, dated the 3rd March 1952.

DYR.

22/6.

5e.

Submitted with reference to the R.D. note at
p.57 ante.

2. The facts of the case have been fully stated in
the R.D. Office note on pp.39-41 ante.

3. One Shri K.T.Patil the tenant of a certain lands
at Oalsand had made a revision application to the B.R.T. against
the order of the Pwant Officer, Dholka Pwant, dated 13-10-1949, confirming
the order of the T.A.E. dated 30-6-1949 directing
the restoration of possession of part of the lands in the tenant's
occupation to the landlord and retention by the tenant of certain
other lands with the consent of the landlord which were sufficient
for the maintenance of the tenant. The application was rejected
by the B.R.T. on the point of jurisdiction on the grounds that (1)
the matter involved a point of fact as to whether the landlord's
requirements were bonafide; and that (2) the proceedings were in
the nature of possessory action under the Mamlatdar's Courts Act
and were not proceedings of the nature specified in section 99(3)
of the Bombay Tenancy and Agricultural Land Act, 1948. Thereupon
Shri K.T.Patil, the tenant, approached Government for a stay order and
Govt. granted the same. In the meantime in view of the A.O.'s
opinion dated the 9th September 1951 the B.R.T. was requested to
review its decision. The B.R.T. has, it appears, adhered to its
earlier view. In view of the stand taken by the B.R.T. the question
raised for H.L.A.'s consideration is whether Govt. can exercise revisional
powers in the matter and set aside the orders of the
T.A.E. and P.O. on the ground that the notice (not among the papers)
under section 7(1) of the Bombay Tenancy Act, 1939 given by the
landlord was not proper.

Ed.....27/2.

U.R. to R.D.No. 3491 of dated 3-3-52.

VR. 22/4. 5a.

15.

Local Department.

Attention of the Revenue Department is invited to the opinion in the linked case. In view of that opinion Government cannot interfere in revision with the orders of the Tenancy Aval Karkam and Prant Office which are apparently without jurisdiction.

Sd/.....3/3.

Additional Secretary to Government.

U.R. to R.D., No. 3491, dated the 3rdrd March 1952.

DYR.

22/6.

45c.

Bombay Tenancy
and Agricultural
Lands Act, 1948.
Section 64.

Registration of
sale deed is after
coming into force
of -

The view taken by the Inspector General of Registration is correct. A registered document operates from the date of execution (see section 47 of the Indian Registration Act). As the sale deed in the present case was executed on 27th December 1948 i.e. before the Bombay Tenancy and Agricultural Lands Act, 1948 came into operation, it would not offend against section 64 of that Act even though it was registered after that Act came into operation .

Sd.....14/3.

Additional Secretary to Govern-
ment.

U.R. to R.D.No. 3953, dated the 14th March 1952.

DYR.

22/6.

Sc.

Legal Department.

Bombay Tenancy and
Agricultural Lands
Act, 1948.

R.L.A.'s opinion
No. 17367 dated the
7th December 1950.

Under the Indian States (Application of Laws) order, 1948, the Bombay Tenancy Act, 1939, was extended to the merged Sangli State with effect from 15th September 1948 and section 3-A thereof provided that " Every tenant shall on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, of 1946 be deemed to be a protected tenant— unless his land lord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant."

The Bombay Tenancy (Amendment) Act of 1946 came into force with effect from 8th November 1946 and when the Bombay Tenancy Act, 1939, was extended to merged area the relevant date i.e. the 7th November 1947 had expired long ago. No question of a tenant's right as a protected tenant or the landlord's right to go to a court of law under this section could therefore possibly arise. On 28th ~~September~~ December 1948 the Bombay Tenancy and Agricultural Lands Act, 1948, came into operation and the Act of 1939 was repealed. Section 89(2)(b) thereof would have no application to the present case since as stated above no rights could be acquired under the said section 3A. However, by the amendments effected by the Merged States (Laws) Act, 1950, in the said section 3-A in relation to the merged Sangli State the relevant date i.e. 7th November 1947 has been changed to 11th August 1949 and every tenant with effect from that date has now to be deemed to be a protected tenant unless his landlord has prior to the date made the

21.

application. In the present case the application was made on the 5th August 1949 and the action taken would clearly be under the Bombay Tenancy and Agricultural Lands Act, 1948, as amended by the ~~now~~ Merged States (Laws) Act, 1950. R.L.A.'s opinion No. 17367 dated 7-12-1950 would, therefore, apply and as stated therein there would be no appeal against the order of the ^Hamlatdar. The view taken in the R.D. office note (page 21 ante) is correct.

Sd.....20/3.

Additional Secretary to Government.

U.R. to R.D.No. 4375, dated the 22nd ^Harch 1952.

DYR.

22/6.

5c.

Bom. Tenancy & A.L.
Act. 1948.
Addl. Secy's
Opinion No. 39523
dt. 14-3-52.

In Additional Secretary's opinion No. 3953, dated the 14thth March 1952 it has been held that a registered document operates from the date of execution and that the sale deed in that case although it was executed on 27th December 1948. i.e. before the Bombay Tenancy and Agricultural Lands Act, 1948, came into operation, would not offend against section 64, of that Act, even ~~at~~ though it was registered after that Act came into operation. The Revenue Department has made a reference to the Bombay Revenue Tribunal's decision in its Order No. 0.1122, dated the 7th August 1951 wherein the Bombay Revenue Tribunal has held that as the title does not pass on until registration, the date of registration is relevant to determine the date of sale, and has referred the papers to the R.L.A. for reconsideration of the previous opinion.

2. It does not appear that there is any need to reconsider the view taken in Additional Secretary's opinion No. 3953, dated the 14th March 1952. It has been well established after the decision of the Privy Council in Venkatsubba V. Sibba Rama (I.L.R. 52 Bom. 313) that in the case of a transfer by sale, the date of the sale is the date of execution of the sale ~~and~~ deed; and that the alienation is complete when the conveyancing document is completed and is not postponed until the date of registration,

(See. A.I.R. 1937 Nag. 1 at p. 3. and I.L.R. 1939 Na. g. p. 652.).

* U.R. & R.D. No. 5850,
dated the 18th April 1952.

Sd/.....17/4.

Legal Department.

Owing to the disputes between the Inamdars and their tenants of the village of Ambewadi which formed part of the merged State of Kurundwad, the Kurundwad State authorities assumed the management of the village on 6th May 1930. It was stated that the management was assumed under section 111 of the Land Revenue Code as in force in the Kurundwad State. The said management was continued by a proclamation issued in 1942. By an order dated 4th January 1945 the Raja of Kurundwad fixed the rates of the recovery of rent according to the nature of the land. It was declared that the tenants were permanent tenants. It was further declared

" that a Rayat will enjoy permanently the land assigned to him, only if he continued to pay the rent as fixed, without default and in a due time. A Rayat forfeits his right of permanent tenancy if he fails to pay the rent for three successive years in which case the State may assign and give possession of his land to any other person whom the State may choose. All the disputes arising between the Inamdars and the Rayats of Ambewadi, and relating to the said tenancy shall have in further no recourse to the Civil Courts, but they shall be decided ~~by~~ by the State or by such person or persons as the State may authorise or appoint in that behalf."

It is no doubt true that after the merger of the Kurundwad State the proclamations relating to the assumption of the management of the Village which purported to have been issued under section 111 of the Land Revenue Code as in force in the Kurundwad State were cancelled by the ~~for~~ Bombay Government by G.R.(R.D.)No.1031/49,

dated 20th May 1950, and the management of the village was assumed under section 44 of the Bombay Tenancy & Agricultural Lands Act, 1948. But no steps were then taken to cancel the order of the ruler of Kurundwad dated 4th January 1945. Although the order was passed when the estate was under management, it does not appear that the order was made as a part of the management. It was

passed by the Ruler to settle the disputes between the Inamdars of Ambewadi and their tenants which were of a long standing nature. It is stated in the order " I am convinced that it will be in the interest of all parties concerned, the Inamdars, Rayats and the State, to have a permanent arrangement of recovery of rents, relating to assessment, so far ~~x~~ as Ambewadi is concerned in order to avoid the further trouble between the Inamdars and Rayats and Ambewadi. It is clear from the contents of the order that it was passed by the Ruler of Kurundwad in ~~his~~ his capacity as a ruler and not in consequence of the fact that the village was under the ~~x~~ management of the State. Although ~~in~~ therefore the proclamations relating to the management may have been cancelled, the order ~~x~~ survives and still is in ~~order~~ operation. The contentions urged by the Inamdars regarding the legality of the order have no substance. The Ruler of the Kurundwad State, though under the political suzerainty of the British Government had a right to pass the order. It is alleged that an appeal was made against the order. But it is stated in R.D. Notes that no such appeal is traceable. In any case the order dated 4th January ~~1944~~ 1945 has not been cancelled. The report of Shri Harti dated 16th April 1931 ~~on which~~ on which reliance has been placed on behalf of the Inamdars shows the helpless conditions of the Rayats and also indicates that no reliance can be placed on the records of the village which were prepared by the Inamdars themselves as Kulkarnis. In these circumstances there are no grounds for setting aside the order passed by the Ruler of Kurundwad in 1945, and the fixation of rents and tenure made in order need not be disturbed. Sec. 30 of the Bombay ^{Tenancy} Relief & Agricultural Lands Act, 1948, ^{sever} ^{such} ~~advises~~ all ~~such~~ rights and ~~privileges~~ of the Ambewadi. *Trust of Ambewadi.*

Sd.....25/4.

Additional Secretary to Government.

Legal Department.

The view taken in the R.D. Office note at page 3 ante is correct. As pointed out in R.L.A.'s Opinion No. 16060 dated the 16th November 1950, the right to continue proceedings is a vested right and would remain unaffected by territorial changes effected under section 7 of the Bombay Land Revenue Code unless there is a statutory provision for the transfer. Section 72-A of the Bombay Tenancy and Agricultural Lands Act, 1948, which empowers the Collector to transfer proceedings pending before one Mamlatdar in his district to any other Mamlatdar in his district will have no application to the present case. Consequently, the proceedings before the Mamlatdar of Miraj will have to be continued notwithstanding the territorial changes.

Sd/.....15/5.

Additional Secretary to Government.

U.R. to R.D.No. 8194, dated the 16th May 1952.

DYR.

22/6.

5c.

Bombay Tenancy and
Agricultural Lands
Act, 1948.
Sections 64 & 84.

The question raised in this case is whether a tenant who has been dispossessed by a purchaser of the land from a landlord in contravention of section 64 of the Bombay Tenancy and Agricultural Lands Act can be restored - possession under section 84 and, if so, whether any time limit for entertaining such application is prescribed by the Act.

Under section 84 of the Bombay Tenancy and Agricultural Lands Act, any person unauthorisedly occupying or wrongfully in possession of any land the transfer of which either by act of the parties or by operation of law is invalid under the provisions of this Act, etc., may be summarily evicted by the Collector. A sale in contravention of section 64 is void. Consequently a purchaser of land in contravention of section 64 can be considered to be unauthorisedly or wrongfully in possession of land and the tenant who has been evicted by such person can be restored possession under section 84. There is no time limit prescribed for the summary eviction under section 84. Section 29(2) which prescribes a period of two years has no application to an action under section 84. The presumption made by the Collector is correct.

Sd.....7/3.

Additional Secretary to Government.

U.R. to R.D.No. 2680, dated the 7th March 1952.

Bombay Tenancy
and A.L. Act, 1948
section 64.

Bombay Prevention
of Fragmentation
and Consolidation
of Holdings Act
1947.

Section 9.

It appears that the Mamlatdar ~~is~~ has passed an order under section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948, permitting the sale of the land to the tenant, but the area of the piece of the land thus permitted to be sold is less than the standard area determined under chapter II of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, and therefore the sale of the land would be in contravention of section 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The question raised for the R.L.A.'s consideration is whether Government can cancel the order of the Mamlatdar passed under section 64 of the Bombay Tenancy and Agricultural Lands Act. If not, what course of action would be suitable.

2. Section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948, does not contemplate any order of the Mamlatdar permitting the sale of land by a landlord. All that that section requires is that the landlord should make an application to the Tribunal for determining the reasonable price of the land and on thus determining the reasonable price it would be open to the landlord to offer the land to persons in the order of priority prescribed under Sub-section (2) of that section. The mere fact that the Tribunal or the Mamlatdar fixes the reasonable price of a ~~land~~ land would not mean any permission for sale of the land to any particular person.

33.

Consequently, the order of the Mamlatdar, even if any, in this respect is ultra vires. The land-lord is bound to comply with the provisions of the Bombay Prevention of Fragmentation and Consolidation Act, 1947, if he wants to sell his land. Any sale of the land in contravention of section 9(1) is void and the owner of the land would be liable to the penalty prescribed under sub-section(2) of that section.

In view of these circumstances, the Mamlatdar should be directed to bring this fact to the notice of the landlord and cancel his order determining the price on the ground that no sale can take place of the land.

Sd.....7/3.

Additional Secretary to Government.

U.R. to R.D.No. 3714, dated the 10th March 1952.

DYR.

22/6.

50.

Bombay Tenancy
and Agricultural
Lands Act, 1948.
Sections 54 & 56.

Section 54 of the Bombay Tenancy and Agricultural Lands Act, 1948, requires the Manager to prepare and submit to the Collector's ~~a~~ a scheme for liquidation of debts and liabilities and under section 56 ~~and~~ the ~~Collector~~ Collector is empowered to sanction the liquidation ~~scheme~~ scheme and to notify it. It is apparent from these provisions that the authority to prepare the scheme for liquidation of debts and liabilities and the authority to sanction it could not be one and the same. Consequently, it would not be legal to appoint the Collector as Manager of the Estate as there will ^{be} no other authority to whom he can submit the liquidation scheme for sanction. In the present case, however, the Collector has already been appointed as Manager of the estate and there does not appear to be any provision in the Act empowering any other authority to exercise the powers of the Collector under section 54 and 56. ³ ~~Some~~ other officer may be appointed as the manager and ~~as~~ he may be asked to submit the liquidation scheme for sanction to the Collector.

Sd.....11/3.

Additional Secretary to Government

U.R. to R.D.No.3850, dated the 11th March 1952.

DYR.

22/6.

5a.

Bombay Tenancy and
Agricultural
Lands Act, 1948.

Sec.12(4)
Retrospective
effect of -

The view taken by Revenue Department is correct. Section 12(4) of the Bombay Tenancy and Agricultural Lands Act, 1948 does contemplate that the order determining reasonable rent should be retrospective i.e. effective even for the year in which the application is made even though the order is passed during the next year.

Sd/.....11/3.

Additional Secretary to Government.

U.R. to R.D.No. 3873, dated the 13th March 1952.

DYR.

~~22/6~~ 22/6.

50.

Chitalaar Manpada
Village
Sale of Inami
rights.
Bombay Tenancy &
Agricultural Lands
Act, 1948.-
Sections 63 and 64.

It appears that the holder of Chitalaar Manpada village, which is an inam village of Class II, wants to sell certain agricultural lands standing in his name in the village as well as his inami rights over the whole village to one Shri M.S. Deshi. He has applied to the Collector for his permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, for sale of lands and inami rights over the village. The question raised for the R.L.A.'s consideration is whether the term 'interest' in section 63 converse the inami rights also.

The village being a personal inam of Class II, the inamdar is entitled to alienate it. "Inami rights" mean rights which an inamdar possesses over the village. These rights may be in respect of agricultural as well as non-agricultural lands in the village. Sections 63 and 64 of the Bombay Tenancy & Agricultural Lands Act provide for restrictions on transfer of agricultural lands. Consequently, these provisions would not apply to the transfer of non-agricultural lands and the inami rights in respect thereof. Section 63 prohibits transfer of agricultural lands to a non-agriculturist. The inamdar would be competent to transfer agricultural lands in his possession with his inami rights over them to an agriculturist but he would not be competent to transfer the agricultural lands in possession of his tenants as well as the inami rights over them without the permission of the Collector or except as provided in section 64. The words "interest therein"

"interest therein" in section 63(1)(a) mean interest in the agricultural lands. Inami rights over agricultural lands would constitute an interest therein within the meaning of section 61(1)(a).

Sd/.....13/3.

Additional Secretary to Government,

U.R. to R.D.No. 3908, dated the 13th March, 1952.

DYR.

22/6.

5a.

S.No.901 at Chepda was an inam land held by Nawabkha Jamsherkha. It was in the possession of the applicant Dhendu Mathu Patil as a tenant. The Inamdar ~~sent~~ relinquished the land. The inamdar relinquished the land in favour of Government under rules 74A and 74B of the Bombay Land Revenue Rules. It appears from the applicant Dhendu's statement recorded by the ^{Am}latdar on 28th December 1949 that the applicant consented to the relinquishment of the land by the inamdar. In that statement the applicant has no doubt stated that if the land is regranted to Nawabkha Jamsherkha, he should be directed to sell it to him or to continue him as a protected tenant. But his statement would not affect the fact that he had consented to the relinquishment. In pursuance of his consent the applicant has also executed a Kalyayut in favour of Government. Whatever rights he had against the inamdar as a protected tenant or ~~ten~~ otherwise were extinguished or come to an end at the date of the relinquishment to which the applicant consented. He cannot, therefore, claim them nor can he contend that he has a right to purchase the land under section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948. The land has been now regranted to Nawabkha Jamsherkha on new tenure. The applicant is still in the possession of the land as a tenant. On the regrant he would continue as the tenant of Nawabkha Jamsherkha. If Nawabkha Jamsherkha now wants to sell the land, the applicant can claim to purchase the same under section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/.....15/3.

Additional Secretary to Government.

U.R. to R.D.No. 4052, dated the 17th March 1952. .

DYR. 22/6. 5c.

Local Department.

Bombay Tenancy
A.L. Act, 1948.
Section 9.
14(1).

Pasayata Land
Commutation of
Service into
Cash.

It appears that the Mahalkari of Vadgam passed orders committing the services rendered by the Pasayata land-holders into cash, holding them as tenants. Since the Pasayata holders did not pay the cash dues to the jagirdars, the latter have filed applications for taking possession of the land under section 14(1) read with section 29(2) of the Bombay Tenancy and Agricultural Lands Act. The Pasayata holders render chakiat service at the village. The Under Secretary R.D. , suggests that the Mahalkari should reject the applications for possession or the Pasayata holders should be advised to prefer appeals against the orders issued by the Mahalkari. The lands in dispute are in Vadgam in the merged State of Palanpur. It is true that the Bombay Hereditary Offices Act, 1873 has not been applied to the merged areas. But apart from that ~~as~~ question the Mahalkari had no right to commute the services of the pasayata holders. The relationship between the Pasayata holders and the Jagirdars would not be that of landlord and tenant and the R.L.A's opinion No. 7627 dated 14th May 1951 will apply. The action taken by the Mahalkari under section 9 of the Bombay Tenancy and Agricultural Lands Act, 1948, was clearly illegal. The orders being without jurisdiction are of no effect. This position may be brought to the notice of the Mahalkari and he may be directed to vacate his own orders.

Sd.....12/3.

Additional Secretary to Government.

U.R. to R.D. No. 4162, dated the 18th March 1952.

Legal Department.

Bombay Castle (Bombay No.1), 29th April 1952.

To

The Director of Agriculture,

State of Bombay,

Penna 1.

Subject: Renewal of leases at agricultural land
at Puntamba, Taluka Kopergaon, District
Ahmednagar.

Sir,

With reference to your letter No. Edn.14, dated
the 15th April 1952, on the above subject addressed to the
Remembrancer of Legal Affairs, I have the honour to
observe as follows:-

Government is not an "agriculturist" within
the meaning of section 2(2) of the Bombay Tenancy and Agricultural
Lands Act, 1948, as Government cannot cultivate personally.
Government is not, therefore, a tenant within the meaning of
section 2(18). That being so, Government cannot get the benefits
which are extended to the tenants. The view expressed by you
is correct.

2. Your attention is invited to rule 20(4) of the
Law Officers Rules whereunder such a reference should have been
made through the Administrative Department and not direct
to the R.L.A.

Yours faithfully,

Ed/.....29/4.

Additional Secretary to Government,

Legal Department.

Bombay Tenancy Act,
1938
Section 28.

Survey No. 220/1 of Dhadna village was originally owned by one Dhandu Vedu Shimpi and he sold it to one Atmaram Gangaram, in 1934. Even after the sale, Dhandu through his son Ukharam continued to remain in possession of the land under a lease from Atmaram. After Dhandu's death, Ukharam continued to ~~xxx~~ cultivate the land and from 1942-43 executed leases in favour of Atmaram. He continued cultivating land from 1944-45 to 1947-48 ~~xxxx~~ without executing any lease. There is however enough evidence on record that he did ~~xxx~~ cultivate the lands from 1942-43 to 1947-48. In September 1947 Atmaram sold the land to one Bandu Kalu and Bandu again sold it to one ^Handee D. Ahirrae, the applicant, on 23rd June 1948. Ukharam's brother Pandas had the power of attorney in respect of their joint family property and in the alleged exercise of that power, he surrendered the tenancy rights in respect of the land on this date to the new purchaser at the bidding of Atmaram when he was serving as a gurnasta. This power of Attorney relates only to joint family property and the surrender by Pandas of the tenancy rights of Ukharam was clearly improper. Ukharam is stated to have been evicted thereafter, by Shri Ahirrae, the new landlord, without any order of the Mamlatdar as prescribed by Section 24-(1A) of the Bom. Tenancy Act, 1939. On 10th November 1948 Ukharam applied to the Mamlatdar of Sakri for possession of the land. The T.A.K. Sakri who heard the application held that Ukharam was unlawfully evicted from the land and ordered that possession should be

restored to him immediately. He further directed that the sugar-cane crop then standing on the land should be forfeited to Government and also ordered the landlord to pay the costs. On an Appeal by the landlord, the Collector West Khandesh has confirmed that T.A.K.'s order.

A revision application to the B.R.T. has also been rejected by the Tribunal on the ground that it has no jurisdiction in view of ~~sub-section~~ Section 89(3) of the Bombay Tenancy and Agricultural Lands Act, 1948 and that the finding of the fact by the Collector that the tenant was forcibly evicted was binding on it. The landlord has now made an application to Government under Section 28 of the repealed Bombay Tenancy Act for setting aside the order of the Collector. The R.D. proposes to confirm the order so far as restoration of possession to the tenant is concerned. However since the proceedings are under the repealed Bombay Tenancy Act which contained no provision for forfeiture of crops or regarding awarding of costs the R.D. proposes to set aside so much of the Collector's order. The Remembrancer of Legal Affairs is requested to advise.

3. It is clear from the evidence on record that Shri Ukharam Dhondu who has been recorded as a protected tenant in respect of the land in question was evicted from that land otherwise than under or in accordance with the order of a Mamlatdar as required by section 24(1.A) of the Bom. Tenancy Act, 1939. He is therefore entitled to possession. However, his application dated the 10th November 1948 in virtue

of the provisions of sections 89(2)(ii) of the Bombay Tenancy and Agricultural Land Act, 1948 should have been heard and disposed of in accordance with the provisions of the repealed Act. Both the T.A.K. and the Collector treated it as an application under Sub-section (2) of Section 29 of the Act of 1948 and have not only awarded possession under this provision but also forfeited the crops and awarded costs under sub-section (4) of this section. These orders being in contravention of Section 89(2)(b)(ii) of the Act of 1948 are illegal and void. In the peculiar circumstances of the case it would be desirable to set aside the order of the Collector in so far as it relates to costs and forfeiture of the crops.

Sd.....1/7.

Additional Secretary to Government.

U.R. to R.D.No. 8902, dated the 28th May 1952.

DMR.

22/6.

5a.

Bombay Tenancy and
Agricultural Lands
Act- 1948.
 Section 2(2A)

Personal Assistant
 to the Collector-
 whether a Collector.

The Personal Assistant to the Collector will not as such be a Collector as defined in section 2(2A) of the Bombay Tenancy and Agricultural Lands Act, 1948, and will not in that capacity be competent to exercise the powers of the Collector under the Act. But the office of the Personal Assistant is not statutory and if he is a Deputy or Assistant Collector and is also appointed as such for a district, he can exercise the powers of the Collector under the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/.....30/5.

Additional Secretary to Government.

U.R. to R.D.No. 5042, dated the 30th May 1952.

DYR.

22/6.

5c.

Bombay Tenancy
and Agricultural
Lands Act, 1948
Sec. 63(1)(a).

Transfer of
 Lands to Anand-
 nagar Co-operative
 Housing Society
 by its members.

The view taken by R.D. is correct. Under section 63(1)(a) of the Bombay Tenancy and Agricultural Lands Act, 1948, no sale, gifts, exchange or lease of any land or interest therein shall be valid in favour of a person who is not an agriculturist. Under the proviso thereto the Collector or an officer authorised by the State Government can, however, grant permission for such sale, gift, exchange, etc., on such conditions as may be prescribed. It appears that about 162 members of Shree Anandnagar CO-Operative Housing Society who own lands propose to transfer them to the Society and for that purpose they have given notice under section 135C of the Bombay Land Revenue Code of the transfer of these lands. The Collector considers that since the transfer involves no sale, gift, exchange or lease or interest therein as provided in section 63(1)(a) of the Bombay Tenancy and Agricultural Lands Act, no permission of the Collector is necessary.

This view of the Collector is not correct. The lands belong to the members and the transfer of these lands to the Society involves a transfer of an interest in these lands to the Society. Consequently, even if the transfer involves no sale, gift, or exchange, it does involve a transfer of an interest as provided in section 63(1)(a) and consequently the permission of the Collector would be necessary.

Sd.....11/6.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9820, dated the 12th June 1952.

DYR.

22/6.

5a.

It is true that in Purushettan Mali's case Civil Application No. 274 of 1951, the High Court proceeded on the assumption that the application made by the landlord for possession of the land was one under the Mamlatdar's Court Act and not one under section 24(1-A) of the Bombay Tenancy Act, 1939. But it is doubtful whether an application by a landlord for possession of the land could lie under section 24(1-A) of the Bombay Tenancy Act when the ordinary jurisdiction of the Civil Court or of the Mamlatdar's Court has not been ousted under the Bombay Tenancy Act. Even assuming that an application for the purpose under section 24(1-A) of the Bombay Tenancy Act could lie, the point whether the State Government or the Revenue Tribunal will have jurisdiction under the new Act to interfere with the orders passed by the Mamlatdar or Aval Karkun in such proceedings is not free from doubt. The Advocate-General has taken one view while the Revenue Tribunal has taken the contrary view. If such cases are not many, it will be desirable to allow the parties aggrieved to take up the matter again. The view taken by the Bombay Revenue Tribunal is not binding or conclusive.

Sd/.....8/7.

Additional Secretary to Government.

U.R. to R.D.No. 114/3, dated the 10th July 1952.

Legal Department

R.I.No.12601 dt.26.6.52.

Submitted with reference to the R.D.
Office note at pp.15-16 ante.

2. The facts of the case are stated in the report of the Collector of Surat dated the 22nd May 1952.

It appears Shrimati Shantabai Vadvale the mother and guardian of the minor occupant of S.No.123/4 and 123/5 of Vad.Taluka Mangrol and Shri Davla Thagosa the occupant of S. No.85/1 of Manikapi, Taluka Mangrol desire to exchange their lands and under the misapprehension that the sanction of the Collector is necessary for the exchange, presumably under section 63(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, have unsuccessfully approached the Collector of Surat in that behalf. The Collector considers that since the lands are cultivated by protected tenants the exchange cannot be allowed as there is no provision for the same, in the Act. Shrimati Shantabai has now approached Government with a request to allow the exchange. The U.S./R.D. considers that the Bombay Tenancy and Agricultural Lands Act does not prohibit exchange of land to an agriculturist and as such there would be nothing objectionable in the transaction of the present case. The R.L.A. is requested to advise.

U.R. to R.D.No.11138 of dt.5-7-52.

The Remembrancer of Legal Affairs in his several opinions has all the while consistently taken the view that if a landlord wants to take possession of his land from his tenant on the termination of the tenancy either under section 5(2) or section 7(1) of the Bombay Tenancy Act, 1939, he should apply either to the Mamlatdar under the Mamlatdars's Courts Act or to the Civil Court as there was no express provision in the Act ~~of~~ imposing restriction on the jurisdiction of the Mamlatdar or the Civil Court/. This view is supported by the decision of the Revenue Tribunal in application No.0-87 of 1949(Samabhai's case) where it was clearly stated " that the landlord has been left to his former remedy for possession under the Mamlatdar's Court or in a Civil Court." In Sudkya Ramaji Mahar Vs. Mohamed Ishak, 52, B.L.R. page 123 it was held by the Bombay High Court that when a decree is obtained in a Civil Court for possession of a land by the landlord from his tenant, such decree could be executed in the Civil Court and it is not necessary that a separate application for possession should be filed under section 24(1-A) of the Bombay Tenancy Act, 1939. . Similar is the view taken by the Bombay High Court in Civil Reference No.3 of 1947; but whether a landlord could obtain possession of his land from his tenant by an application under section 24 A of the Bombay Tenancy Act instead of by a suit either in the Mamlatdar's Court or in the Civil Court was not considered in either of the two aforesaid decisions of

the Bombay High Court. But in the Civil Reference No.3 of 1947, the scope of section 24 A was incidentally considered. It was held that " notwithstanding section 24A of the Bombay ~~Tenancy~~ Tenancy Act, 1939, a Civil Court is competent to try a suit filed by a landlord to obtain possession of a land held by his tenant and that section 24(1-A) applies only in those cases in which a landlord seeks to recover possession from his tenant otherwise than by virtue of a decree by a civil Court. The only interpretation that can be placed upon section 24(1-A) when it is read along with the other provisions of the Act particularly sections 20 and 21 which recognise the ordinary right of a landlord to file a suit in ejectment against his tenant is that it does not apply in cases in which decrees have been passed by civil courts. Landlords frequently obtain possession of their lands from their tenants otherwise than through a Civil Court, for instance, when a tenant ~~relinquishes~~ surrenders the lease or when the period of the lease expires and the tenant is willing to hand over possession. Instances are known in which surrenders of leases were obtained by the use of undue influence or other undesirable means. Similarly, ~~very~~ many tenants are not aware of the provisions of section 23 of the Bombay Tenancy Act, according to which every lease of an agricultural land must be for a period of ten years, and no lease can be terminated before the expiry of that period only on the ground that the period of lease has expired. It appears that the legislature wanted to provide that even in such cases the landlord shall not enter upon possession of the land directly, but that he should apply to the Mamlatdar, who will then enquire and ascertain whether the tenant is aware of the rights conferred upon him by the Act, whether after being made aware of these rights he is still willing to hand over possession of the land and whether any undue influence

or improver pressure had been brought to bear upon him in order to secure surrender of the lease. It is ^{True} ~~ture~~ that the interpretation of section 24(1-A) involves a restricted meaning being given to the general words used in the section. But this is permissible when the language of a statute in its ordinary meaning and grammatical construction leads to inconvenience, hardship or injustice presumably not intended."

It is clear from these observation that section 24(1-A) will come into operation only in ~~such~~ such cases where the landlord tries to obtain possession of the land on the ground of surrender of leases etc. without going to the Civil Court. These observations impliedly support the view taken by the Remembrancer of Legal Affairs that the jurisdiction of the Civil Court and of the ~~xx~~ ^{xx} ~~amlaadars'~~ Courts not being ousted, the landlord will have to obtain possession of his land from his tenant through such court on termination of lease and section 24(1-A) of the Bombay Tenancy Act, could not be available to him. It is true that the decision of the Civil Judge in Civil Suit No. 461 of 1949 is contrary to the view taken by the Remembrancer of Legal Affairs. But the correctness of that decision could not be tested by taking the matter to the High Court as no decree was passed against Government even though Government was made a party and the private party against whom the decree was passed did not, it appears, take the matter to the High Court. In the absence of any authoritative decision of the Bombay High Court, there is no reason why the R.L.A.'s opinions supported as they are by the Revenue Tribunal's

decisions and the observations of the Bombay High Court in Civil Reference No.3 of 1947, should be ~~far~~ doubted.

If there are many cases of this type ~~at~~ still surviving, Revenue Department will suggest legislation.

Sd.....10/7.

Additional Secretary to Government.

U.R. to R.D.No. 11495, dated the 11th July 1952.

DYR.

22/6.

5e.

Bombay Tenancy
and Agricultural
Lands Act, 1948,
Section 14(1).

Notice of
termination
of tenancy
Duration of -

The question raised for the consideration of the Remembrancer of Legal Affairs is what should be the duration of notice of termination of tenancy under section 14 sub-section (1) of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. Section 3 of the Bombay Tenancy and Agricultural Lands Act, 1948, provides that the provisions of Chapter V of the Transfer of Property Act, 1882, shall, in so far as they are not inconsistent with the provisions of this Act apply to the tenancies and leases of lands to which this Act applies. Section 106(Chapter V) of the Transfer of Property Act provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee by six months notice expiring at the end of the year of the tenancy. There being nothing in section 14 of the Bombay Tenancy and Agricultural Lands Act which is inconsistent with section 106 of the Transfer of Property Act, notice of six months for terminating the tenancies under section 14 sub-section(1) of the Bombay Tenancy and Agricultural Lands Act appears necessary.

Sd.....14/3.

Additional Secretary to Government.

U.R. to R.D.No. 4016, dated the 15th March 1952.

DYR. 23/6. 5c.

By the amendments affected in the Bombay Tenancy Act, 1939, in its application to the Area of merged Sangli State an application by the landlord under section 3-4A thereof for a declaration that the tenant was not a protected tenant was required to be made before 11th August 1949. The application made by the landlord in the present case on 5th August 1949, was therefore in time. However, since appeal against the order of the Mamlatdar, under section 3-A, had not been provided for the Bombay Tenancy and Agricultural Lands Act, 1948, which came into force on the 28th December 1948, and the Legislature has expressed a contrary intention, the applicant could claim no right of appeal (see section 89(2)(b)).

In Revision Application No. O. 1572 of 1951 the F.R.T. has taken a similar view in a case x from the merged area of Miraj State under analogous provisions of law. That order has been challenged in Civil Application No. 444 of 1952, in the High Court and it would be advisable to await the decision of the High Court in the matter.

Sd.....5/7.

Additional Secretary to Government

U.R. to R.D.No. 11193, dated the 7th & July 1952.

DYR.

22/6.

By his order No. TROCR/152, dated the 27th June 1951, the Assistant Collector, Thana Prant, directed the assumption of the management of S.Nos. 144/4, 99 and 100 under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948. Out of these S.Nos. the Collector reports that the last two were not included in the area permitted by the District Deputy Collector's Order No. HAP.341, dated the 31st January 1951, to be used for a non-agricultural purpose. If no permission had been granted to use these lands for a non-agricultural purpose and if they were lying uncultivated for two consecutive years as contemplated by sub-section (1) of Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948, the Assistant Collector's Order dated the 27th June 1951, directing assumption of management would appear to be in order & so far as these S.Nos. are concerned.

2. The next question raised by the Revenue Department is whether land in respect of which non-agricultural permission has been granted by the Collector under section 65 of the Bombay Land Revenue Code, 1879, and which has not been actually put to such use cannot be taken over under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Bombay Tenancy and Agricultural Lands Act, 1948, applies to agricultural lands only. ~~When permission to use a land for non-agricultural lands~~ only. When permission to use a land for a non-agricultural purpose is granted, such land is taken out of the category of agricultural lands. Nor does it appear feasible for the Collector under the Bombay Land Revenue Code, 1879, to rescind such permission once granted (Gf.R.L.A's O.No.1313, dated 21-6-1920). Such lands cannot therefore be the subject matter of an order under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/.....29/7.

Additional Secretary to Government.

U.R. to R.D.No/. 12667, dated the 31st July 1952.

DYR.

23/6-52.

Legal Department.

Since the claims put forth before the Manager by the creditors of the estate had not been settled, and no liquidation scheme was sanctioned under section 56 of the Bombay Tenancy and Agricultural Lands Act, 1948, it appears, it would be open to the creditors to approach the civil Court of law to enforce their claims and if they secure a decree against the estate holder, it would be competent for them to execute the same against the money in the hands of the said holders as stated by the Revenue Department. In view of the specific provision made in section 61, it would not be feasible for the Collector to retain the balance of the money due to the estate in his hands for the convenience of the creditors. The inquiries started by the Collector in his capacity as the Manager of the estate will be deemed to have abated on the termination of the management. The view expressed by the Revenue Department appears to be correct.

Sd/.....7 /8.

Additional Secretary to Government.

U.R. to R.D.No. 13206, dated the 11th August 1952 .

DYR.

23/6.

5c.

The question which was considered in H.L.A.'s opinion No.20569 dated 27th December 1951 was whether in a case where the lease itself provides that on failure to pay rent the lesser will be entitled to re-enter on the land, it is necessary to give notice for the termination of the lease. In that it was stated that a condition for re-entry in a lease would involve forfeiture of the lease as provided under section 111(g) of the Transfer of Property Act, 1882, which applies to tenancies falling under the Bombay Tenancy and Agricultural Lands Act. On the termination of leases or tenancies by notice of ejectment or notice to quit under section 111(h) of the Transfer of Property Act, the provisions of section 100 of the Transfer of Property Act, the time limit prescribed therein will be necessary. In the case of the termination of tenancies by forfeiture, the provisions of section 114 and 114A of the Transfer of Property Act will be applicable. Under both the provisions the authority before which the proceedings for ejectment are pending ~~at the time~~ has power to relieve against forfeiture. The provisions of section 14 of the Bombay Tenancy and Agricultural Lands Act, 1948, have to be read along with the provisions of the above provisions of the Transfer of Property Act. There is, therefore, no conflict between opinion No.20569, which relates to the termination of the tenancy by forfeiture, and opinion No.4016 dated the 15th March 1952, which relates to the termination of the tenancy which requires a notice of ejectment.

CA/.....24/5.

Additional Secretary to Government.

U.R. to R.D.No. 8753, dated the 26th May 1952.

DYR.

23/6.

5a.

The view taken by R.D. is correct.

All the actions taken by the Collector as Manager under the Bombay Tenancy and Agricultural Lands Act, 1948, ~~the Collector's actions taken prior to the appointment of the Mahalkari would be valid~~ prior to the appointment of the Mahalkari would be valid and the Mahalkari can take up the matters where the Collectors left them and proceed further. It is not necessary for him to start de novo; and there would be no legal objection to his submitting the same scheme already prepared, for sanction of the Collector, provided he agrees with it.

Sd.....26/6.

Additional Secretary to Government.

U.R. to R.D.No. 10694, dated the 22nd June 1952.

DTR.

23/6.

54.

In clause (c) of Sub-section (1) of section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948, a reference is made to the Municipal Boroughs of Poona City Suburbs and of Ahmedabad.

Paragraph 1 of Appendix IV to the Bombay Provincial Municipal Corporation Act, 1949, provides as to how to construe the references to any Municipal Borough in any enactment other than the Bombay District Municipal Act, the Bombay Municipal Boroughs Act and the Bombay Local Fund Audit & Act for which a corporation has been constituted. It is provided therein that such a reference to Municipal Borough in any other enactment should be construed as reference to the Corporation of the said City. It is not therefore necessary to amend section 88(1)(c) of the Bombay Tenancy and Agricultural Lands Act.

34/.....25/7.

Additional Secretary to Government.

Minister(Rev. A SF).

DYR.

23/6.

56.

Submitted.

2. In this case the order passed by Government on 6-1-1949 in a revision application under section 28 of the Bombay Tenancy Act, 1939, made by Shrinati Umabai the landlord confirming the appellate order of the Prant Officer dated the 18th/21st August 1948 rejecting her request for possession of the lands under section 7(1) of the Act has been set at naught by the order of the District Judge, Satara North in Civil Appeal No. 425, of 1950. The R.D. however does not propose to take any action as Government was not a party to the appeal and it is open to the aggrieved party to go in appeal. These papers are being shown to the R.L.A. for information with reference to R.L.A.'s opinion No. 5487 dated the 17th May 1949.

U.R. to R.D.No. 13461 dt. 18-8-52.

DYR.

23/6. -

5a.

Bombay Tenancy
and Agricultural
Lands Act, 1948./
Section 44.

83.

Assumption of
management of
Bhatsan and
Senari Villages.

It appears the main grievances of the people of Bhatsan and ^Senari, which are unsurveyed and unsettled inam villages held by one Chri Store have been that:

(1) the Jahagirdar treats the cultivators as tenants at will;

(2) the Jahagirdar is entitled to get land revenue only but he claims ownership over the soil and that he has filed Civil Suits against 27 cultivators for recovery of 25 per cent-increase in rent;

(3) although Government suspended the payment of land revenue in neighbouring villages the Jahagirdar recovered it in full;

(4) the Jahagirdar refused the Vethias when they served the police patrol on Government purposes.

On these grounds they requested Government to assume the management of the villages under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948. ~~Now~~ Government considered that a case was made out and directed that the management should be assumed if the Jahagirdar did not settle the suits by mutual agreement within a month. (Please see Minister Revenue's Minutes dated 4th April 1950 and dated 26th September 1950). The Jahagirdar thereafter made an unsuccessful effort to obtain a writ from the High Court restraining Government from taking proceedings under section 44 of the Act. ~~In dismissing the novel petition is going to make a~~

In dismissing the novel petition the High Court observed that " if Government is going to make a valid order we cannot prevent it from ~~not~~ making valid order. If they are not going to make a valid order (the Jehagirdar) can always come to this Court and challenge that order."

These papers are shown to the R.L.A. in view of Minister, Revenue's minute dated the 26th September 1950 and these observations of the High Court, on the point whether management of the villages in question can be ~~assumed~~ assumed by Government.

2. Before the management under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, can be assumed the requisite condition which has to be satisfied is that the State Government is satisfied that on account of neglect of a landholder or disputes between him and his tenants the cultivation of his state has seriously suffered. The section also provided that if it appeared to the State Government that it was necessary for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture to assume the management, it could do so. But on account of legal difficulties involved, this condition is being deleted by the Bombay Tenancy and Agricultural Lands Amending Bill of 1952 which has been passed by the Legislature. On a careful perusal of the case papers it ~~exp~~ appears there has neither been neglect by the ~~landholder~~ landholder nor disputes between him and the tenants as a result of which the cultivation can be said to have seriously suffered. There have been disputes as to the

disputes as to the reasonableness of the rent and the nature of the tenure held by the cultivators and they have been the subject matter of litigation; but these disputes by themselves have not affected the cultivation of the lands. The Collector of Surat has emphatically stated this in report dated the 30th August 1950. The high handed or autocratic treatment meted out to the cultivators by the Jehagirdar is not by itself sufficient to take action under this section unless the cultivation has seriously suffered thereby. It has been claimed by the Jehagirdar that all lands have been put to efficient use and his statement has not been contradicted. No case is also made out that assumption is essential for improving the economic and social conditions of the peasants. In these circumstances it would be difficult to support action under section 44 of the Act.

Sd/.....28/8.

Additional Secretary to Government.

U.R. to R.D.No. 14046, dated the 28th August 1952.

DYR.

23/6.

5c.

I think the procedure followed in this case is not correct. Section 11 of the Bombay Tenancy and Agricultural Lands Act whereunder the recovery of any cess by a landlord has been made unlawful is not one of the sections mentioned in section 70. Consequently the Avallarkun had no jurisdiction to ~~at~~ decide whether the recovery of the cess made by the landlord was or was not lawful. Section 11 is not one of the sections mentioned in section 74 so that the Collector can have no jurisdiction to entertain any appeal against the order of the Avallarkun holding recovery of ~~cess~~ cess lawful. The occupants are primarily liable to pay the cess and they can claim reimbursement from the tenants if they are required to pay it as a part of or in addition to the rent. Whether cess is a part of or in addition to the rent is a question of fact; and if it be not so payable and if the landlord recovers it, section 11 would be attracted. If any recovery of the cess is made in contravention of that section 11, the only remedy for the tenant would be to ~~prosecute~~ prosecute the landlord under section 81. An offence under section 81 is a cognisable offence and if a case of contravention of section 11 was made out the tenant should have reported the matter to the police for prosecuting the landlord for breach. It was also open to him to file a civil suit for refund of the cess from the landlord. The proposal made by the R.D. would not, therefore, be legally feasible.

Sd.....29/8.

Additional Secretary to Government.

U.R. to R.D., No. 14118, dated the 29th August 1932.

DYR.

23/6.

5a.

89/90.

R.F.No. 20023 dt. 26.8.52

Submitted.

2 . It appears the application made by one Shri. S.T. Chandekar who is serving with the Indian Army as a Havildar clerk in the Movement Control Detachment, Poona for recovery of arrears of rent and possession of his land from a tenant has been rejected by the Mamlatdar of Ahmednagar on the ground that it was not presented personally as required by section 72 of the ~~Bombay~~ ^{Bombay} Tenancy and A.L.Act, 1948. It appears from the letter of the Collector and President D.S.S. and A. Board, Ahmednagar dated the 2nd August 1952 that applicant Chandekar claims the protection of the Indian Soldiers' Litigation Act, 1925 and that it would be very difficult for him to attend the proceedings in person. The Collector however considers that, that Act does not exempt from personal presentation of the plaint when required by law to do so and relates proceedings pending in a Court. The R.D. is of the view that as has been held by the R.L.A. application to the Mamlatdar is to be presented in person or by a duly authorised agent and as there is no provision of law exempting soldiers from presenting to the Tenancy Officers application personally Shri Chandekar may present his application through his authorised agent. The R.L.A. is requested to advise.

3. The view taken by the R.D. is correct. The only special privilege allowed to persons in Military Service under the Bombay Tenancy and Agricultural Lands Act, 1948 is contained in section 21 and that section provides that the

tenancy of any land held by a person in the Military service shall not be liable to be terminated only on the ground that the land has been sub-let by or on behalf of such person. The Indian Soldiers' Litigation Act, 1925 has no application to the present case. The other relevant law ^{is} in the Indian Army Act, 1950 which repeals the Indian Army Act, 1911 excepts Cl. XII thereof in the S. 32(I) only provides for priority in respect of army personnels' litigation. There is no provision either in the Ben. T & A.L. Act or any other law empowering a soldier to initiate tenancy proceedings by forwarding his application through post. As ^{expressed} opinion by the R.L.A. ~~held in~~ ^{is} in opinion No. 15777 dated the 13th November 1950, applications under section ~~22~~ 29(2) of this Act have to be presented to the M. Mamlatdar in person either by the applicants or by their duly appointed agents and consequently if for any reason Shri Chandekar is unable to present the application in person it is open to him to authorise some body to make such application on his behalf. /

Sd/.....29/8.

U.R. to B.D.No. 14484/6-9-52, ~~stated~~

DYR.

23/6.

5c.

Submitted.

2. These papers deal with the application of Shri Ratanchand Onkardas Uswal and another for reconsideration of the Govt. Order R.D.No. 7760/49-F, dated the 8th Novr. 1950, setting aside the appellate Order of the Prant Officer A.D.E. Khandesh, dated the 31st August 1949, confirming the Order of the T.A.K. Erondel, dated the 30th May 1949, granting possession of certain lands to that applications landlord from their tenants on the grounds of personal cultivation and that the tenants had done acts destructive and injurious to the land. The main contentions of the applicants are that-

(i) no show cause notice was given to them before the Order was passed;

(ii) Govt. has no jurisdiction to entertain the revision application in cases for possession under section 7(1) of the Bombay Tenancy Act, 1939 and

(iii) ~~the~~ The order give no reasons.

The circumstances under which the Govt. orders were passed are mentioned at pp. 57-58 ante. The proceedings commenced on the application of the landlord on 9th Decr. 1948 for possession of the lands under section 5(2)(c) and 7(1) of the Bombay Tenancy Act, 1939, after he had given a notice to quit to the tenants on 26th Novr. 1947. Neither the defective notice, nor the fact that the tenants under a registered rent-note for five years were entitled to remain on the land till 1951-52, was considered either by the T.A.K. or the Prant Officer. In the revision application filed by the tenant against the Prant Officer's Order under Sec. 76 of the Bom. T. & A.L.Act. 1948, the B.R.T. has referred to these irregularities, but dismissed the application on the ground

jurisdiction. Govt. considered that the orders passed by the T.A.E. and Prant Officer were improper and set them aside. However in view of the point raised in the present application that the parties were not heard before these orders were set aside, Govt. decided to reopen the matter and directed the Collr. to hear the parties and to forward notes of that hearing to Govt. for a final decision. The Collr's report on the hearing is at p. 105 ante. He gave a personal hearing to the parties and has come to the conclusion that the landlords have not proved their bonafides for personal cultivation and that there is no case for reconsideration of the previous orders of Govt. The R.D. proposes to allow the previous orders to stand. The R.L.A. is requested to advise.

3. A/Seen and returned, In the circumstances reported by the Smt Collr.E.E. in his report on the hearing he gave to the parties, it appears the previous orders of Govt. requires no reconsideration. A/. The papers may be seen and returned.

Sd.....7/9.

Additional Secretary

U.R. to R.D.No. 14638/A of 9-9-52.

DYR.

23/6.

50.

Legal Department.

The lands in this case are under the management of the Collector as the Court of Wards. They were taken on lease by the applicant Dhirajlal at a public auction. The annual rent on which they were taken was fixed at Rs. 1369-1-6 and Dhirajlal agreed to pay the same. Dhirajlal now contends that by C.M.R.D. No. 3490/49, dated 10th February 1950, issued under section 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, which was applied to the area, the maximum rent of agricultural lands in the area is 5 times the annual assessment. According to Dhirajlal the said amount comes to Rs. 6844-0. Dhirajlal, therefore, requests that the Court of Wards should be directed to refund to him the excess amount recovered. If Dhirajlal had been a tenant within the meaning of the Bombay Tenancy and Agricultural Lands Act, 1948, it would have been open to him to apply for the fixation of the reasonable rent in accordance with the provisions of the Act. Such reasonable rent would then have been subject to the maximum fixed under section 6. But the Collector reports that Dhirajlal is not personally cultivating the lands, but has sublet them. He is not therefore a tenant within the Bombay Tenancy and Agricultural Lands Act, 1948, and cannot therefore, claim the benefit of the provisions of the said Act. It is true that his sub-tenants may be entitled ^{to} take advantage of the provisions of the Bombay Tenancy and Agricultural Lands Act and the amount of rent payable by them to Dhirajlal may be less. But in that case the proper course for Dhirajlal was to surrender the tenancy and leave the Court of Wards to deal directly with his sub-tenants.

C4/.....23/5.

Additional Secretary to Government.

U.R. to R.D.No. 8692, dated 24thth by 1952.

DYR. 23/6. 5a.

The proposal in this case is that the Bombay Tenancy and Agricultural Lands Act, 1948, should be amended to provide that Government should have revisional powers to revise the orders passed by the Mamlatdars fixing reasonable rent under section 12 or by the Collector in ~~summary~~ appeal. According to the present provisions an order passed by the Mamlatdar under section 12 is appealable to the Collector under section 74 and the order of the Collector is revisable by the Bombay Revenue Tribunal under section 76. But this power of revision is limited. The Tribunal can interfere with the order of the Collector if it is contrary to law or if there is a failure or excess of jurisdiction. These provisions may give rise to difficulties and it may not be possible to give relief to aggrieved parties, where the order of the Collector is not open to the objections referred to in section 76. But to remedy this defect, it would neither be legal nor proper to invest Government with revisional powers in such cases. Under section 85 of the Act the ~~juris-~~ jurisdiction of a Civil Court is barred and the parties aggrieved have been instead given a forum of the Collector in appeal and the Bombay Revenue Tribunal in revision. If the revisional power is to be given to the State Government, as pointed out by R.D., the jurisdiction of the Bombay Revenue Tribunal will have to be ousted and it will have also to be provided that no suit should lie against the decision of Government in revisions. Such a provision would offend against article 19(1)(f) of the Constitution. Both from the point of view of the landlord as well as the tenant it is the fundamental right of both to ~~recover~~ recover reasonable rent in respect of the land leased or to hold it on lease on payment of such rent. Ordinarily both of them will have right to a Civil Court

adjudication of what is reasonable rent. The Substitution of a tribunal of a quasi judicial nature for the adjudication of such right would not be considered unreasonable. But the substitution of the executive Government for ordinary Courts in such matter would not be held to be reasonable and would offend against article 19(1)(f) of the Constitution. The better way to remove the present difficulties and to give relief to aggrieved parties in suitable cases would be to give power to the Revenue Tribunal to interfere in cases on questions of fact, on just and proper ground where the Tribunal is satisfied that there has been a failure of justice.)

Such power was given to District Judges under section 53 of the Dekkhan Agriculturists Relief Act, 1879.

Sd/.....10/9.

Additional Secretary to Government.

U R. to R.D.No. 14839-B, dated the 11th September 1952.

DYR..

25/6.

Se.

99

In this case on an application of the landlord under rule 4 of the Bom. Tenancy & Agricultural Rules, 1949, for the determination of crop share payable to him as rent, the Talati directed the tenant not to remove the crop from the threshing floor without his permission; but notwithstanding such direction the tenant appears to have forcibly removed the crop. The Collector of Kolaba has solicited Government's instructions as to what action is feasible against the defaulters in such cases. The District Government, Pleader, Kolaba has expressed the opinion that no action is feasible in such cases as the said rule 4 does not expressly empower the Talati to promulgate an order prohibiting removal of the crop and such action under section 133 ^{I.B.C.} B.P.U. would not be feasible. The R.D. does not consider it essential to amend the rule as this is a solitary instance the kind so far noticed. The S.L.A. is requested to advise.

H

ED/.....17/9.

U.R. to R.D.No. 15480/A, dated 20-9-52.

DIR.

25/6.

56.

R.I.No 12223 dt. 21.6.52.

2. The Collector of Colaba has sought Government instructions on the point whether the lower rate of maximum rent fixed under section 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 in G.H., R.D. No.1107/49 (a), dated the 29th February/ 1st March 1952 would be applicable with effect from the tenancy year 1952-53. The R.D. considers that the reduced rent will be payable with effect from the date of the notification i.e. if the tenant has already paid the rent before the notification for the year 1951-52, in which year the notification was issued he will not be entitled to the benefit of the reduced rent for that year and that in case the rent has not been paid before that date he will be entitled to the benefit of the reduced rent. ^{He} R.L.A. is requested to advise.

Sd/.....

Reply may be:-

returned
Seen and referred. The view taken by R.D. is correct. 17/9.

U.R. to R.D.No. 16443/A, dated 7-10-1952.

D.Y.R.

25/6.

56.

Bombay Tenancy and
Agricultural Lands
Act, 1948,
Secs. 63 & 64.

The question raised for the R.L.A.'s consideration

Are:

- (1) Whether a Munsifdar is competent to entertain an application for a declaration that the sale is void either under section 63 or section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948 and
- (2) if so, whether the Collector is competent to evict under section 84 of the Act transferees of the lands whose transfer is void either under section 63 or section 64.

It is true that the transfer of a land in contravention of section 63 or 64 of the Bombay Tenancy and Agricultural Lands Act, 1948, is void. But the Act does not require that there should be a declaration by any authority that such transfer is void. Under section 68 the Tribunal is empowered to determine the reasonable price of land under section 64 and under section 74 the Collector is vested with appellate powers against an order under section 64. Under section 64(1) the Tribunal is entitled to determine the reasonable price of land. After having so determined the reasonable price, it is left to the land lord to offer the land at that reasonable price to the persons concerned in the order of priority mentioned in sub-section (2). If the landlord does offer the land in the order of priority as specified in section 64(2), the sale of the land otherwise than as provided therein would be void and it would be open to the Collector to evict the person unauthoritisedly in occupation under section 84.

. to R.D.No. 16694/A, dated the 10th October 1952.

2.

/6.

It appears that on 22nd July 1943 Parikh Chhetalal Bhambhani entered into an oral contract with Bai Laduba the wife of the Thakore Sahab of Bhachar for sale of 21 Kalso of Bajri at the rate of Rs.120/- per kalso and paid Rs.2500/- as part payment of the purchase of money. It was then contemplated by the parties that the Bajri contracted to be sold was to be delivered after the necessary permit in respect thereof was obtained by the Thakore. For some reason or the other the permit was not obtained and the delivery of the Bajri was postponed from time to time till 30th April 1948 when it was refused. Thereafter Shri Parikh debited a sum of Rs. 5,250, to the account of Bai Laduba being the price of 21 Kalso of Bajri at the prevailing rate of Rs. 250/- on the date of the refusal to deliver the goods. After the management of the Bhachar estate was assumed under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, Shri Parikh submitted his claim to the Manager within the time prescribed under section 49. The Manager investigated the claim and found that a sum of Rs. 2500/- was paid by Shri Parikh to Bai Laduba towards the contract for the sale of Bajri, but refused to grant the claim as he considered that it was a private transaction. Shri Parikh thereafter approached Government and on the advice of the Additional Secretary, Legal Department, who was consulted in the matter, Government directed that this claim will have to be investigated on merits of the case. The Manager has now sanctioned the claim for the full amount of Rs.5250. The questions raised for R.L.A's consideration are:-

(1) Whether the claim of Shri Parikh is within the period of limitation;

(ii) Whether Shri Parikh is entitled to the full amount

sanctioned by the Manager or only Rs. 2500, which be paid as part-price with interest at reasonable rate and

(3) whether if the answer to (1) above is in the negative, it would be competent for the Manager to revise this order dated the 22nd January 1952, or whether the Collector can revise it when the liquidation scheme would be submitted for his sanction under section 56 of the Act.

2. From the evidence on record it is clear that on 22nd July 1943, Shri Parikh entered into oral contract with Bai Ladha for the sale of 21 Kalsis of Bajri at Rs.120/-per Kalsi and paid Rs.2500 as part payment towards the purchase money. It was then contemplated by the parties that delivery of the contracted Bajri should be given after the Thakar Sahab obtained the permit. The law implies a reasonable time within which the contract is to be performed when the contract itself is silent as to the time of performance. It is not clear whether the delay or the ultimate refusal to deliver the Bajri was due to non-availability of the permit as a result of any restrictions imposed by Government. In these circumstances Bai Ladha would be deemed to have been discharged of the obligations to fulfil the contract (See A.I.R. 1927 Madras 89 and section 36(2) of the Indian Sale of Goods Act, 1930). It has been contended by Shri Parikh and it has not been contradicted, that the Shri Thakar Sahab from time to time promised to deliver the Bajri as soon as the permit was obtained from the Authorities to whom he had applied for it, and Shri Parikh appears to have agreed to receive the Bajri after that event. It appears from the conduct of the parties that they mutually agreed to extend from time to time, the time for the performance of the contract and in these circumstances the breach would be considered to have

occurred on 30th April 1948, when the delivery is alleged to have been refused. (See *Binkarai Lalit Kumar v. Sukh Dayal Ramdilas*, A.I.R. 1947, Bom. 299). In essence, the claim of Shri Farikh is a claim for money paid upon an existing consideration which afterwards fails and for compensation for breach of a contract express or implied in writing registered and would be governed by Articles 97 and 115 of the Indian Limitation Act, whereunder the period of limitation is 3 years from the date of the failure of the consideration or the breach of contract, respectively. On the point of limitation, therefore, the claim preferred on 21st February 1951, before the Manager, would have to be held as within the period.

3. The second question for consideration is as to the amount that Shri Farikh is entitled to. It has been observed that where the price has been pre-paid wholly or in part, but the goods not delivered, the buyer's damages for non-delivery should be measured by the difference between the contract and the price on the date of the breach, and in addition to recovering the difference between the market and contract price on that date the buyer may also recover the price pre-paid with interest. (See *Chalmers's Sale of Goods Act*, 11th Edn. p.134; and *Fallick and Mulla's Indian Sale of Goods Act*, 2 p.300). Therefore Shri Farikh would be entitled to the difference between Rs. 120/- per Kalai which is the contract price and the rate prevailing on the date of breach that is the 30th April 1948, together with the return of Rs. 2500/- the pre-paid price, with reasonable interest thereon. It may be here stated that some sort of price control has ever since 1943, existed even in the merged States and that rate

rate would have to be considered in arriving at such a difference.

4. On the third question, attention is invited to Additional Secretary's opinion No. 12911, dated the 4th August 1952. As he has held therein the Collector cannot himself undertake the reinvestigation of the claim at the time of sanctioning the scheme under section 56 of the Bombay Tenancy and Agricultural Lands Act, 1948, as such power vests only in the Manager under section 52 of the Act. It would, however, be competent for the Collector to direct the Manager to reinvestigate the claim when the liquidation scheme is submitted to him for sanction.

Sd.....22/9.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 15511/A, dated the 22nd September 1952.

DYA.

25/6.

50.

Seen and returned.

*Bombay Tenancy
and Agricultural
Lands Act, 1948.*

2. The reasoning of the Civil Judge is obviously incorrect. Government not being a party to the proceedings, it is for the tenants to take the matter to a higher Court if they want to challenge the decision of the Civil Judge. In view of the Pargana and Kulkarni Watan Abolition Act, the Kulkarni (Watan) lands would now be definitely governed by the Bombay Tenancy and Agricultural Lands Act. The view taken by the Revenue Department is correct.

Cd.....9/10.

Additional Secretary to Government.

U.R. to R.D.No. 1627/A, dated the 11th October 1952.

D.M.

25/6.

50.

The attention of Revenue Department is invited to clause 18(b) of L.A. Bill No. XXXI of 1952 (A Bill to amend the Bombay Tenancy and Agricultural Lands Act, 1948) which is awaiting the assent of the President and that Department is requested to revise the instructions in Government Memorandum, Revenue Department No. 9390/49-F, dated the 9th April 1951 in the light of the said provisions after the Bill becomes ~~into~~ an Act.

Sd.....9/10.

Additional Secretary to Government.

U.R. to R.D., No. 16818/A, dated the 11th October 1952.

DYR.

25/6.

5a/

The Collector in his report at page 21 ante states that the Thakore of Sika Ruwach who is a Jahgirdar of the old Idar State had full power to dispose of the Jahgir lands. The management of the Jahgir having now been assumed by Government under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, the estate at present vests in the State Government. Under sub-section (1) of section 47 the manager shall during the management of the estate have all the powers which the holder thereof might as such have exercised. For this purpose he steps into the shoes of the holder. The sale in this case, ^{WCS,} however, brought out on 10th August 1948, that is, long before the management of the estate was assumed by Government. A perusal of the Kabulyat at page 101 of File I shows that the same has been signed by the purchased ^a witness, the Kandar and sanctioned by the ~~Ex~~ Thakore Sahab himself. It may be that the thumb impression of the witness to the Kabulyat ^a may not be genuine, but the Thakore himself having sanctioned the same it will not now lie in his mouth to say that the transaction was brought out without his consent, that a fraud was committed on him by the Kandar, or that no auction was held etc. But if the sale is to be avoided, it can be done ~~only~~ through the Court. It does not appear therefore feasible for the Collector in his capacity as the Manager of the estate either to dispute the transaction or to ~~cancel~~ the same. The view expressed by the District ^{Government} Pleader in this behalf does not appear to be correct. The answer to the question raised by the Revenue Department is, therefore, in the negative. If it is intended to allot

the lands for the purposes of cultivation or as Gotehar
it will be necessary to take steps to acquire them
under the Land Acquisition ~~Act~~ Act, 1894.

Sd/.....13/10.

Remembrancer of Legal Affairs .

U.R. to R.D., No. 17003/A, dated the 14th October 1952.

DYR.

25/6.

5c.

Bombay Tenancy and
Agricultural Lands
Act, 1948.

Sect 63.

Raha Agricultural
Farms Ltd.

The Raha Agricultural Farms Ltd., is a company registered under the Indian Companies Act, 1913. The main object of the Company is to start and carry on the business of growing crops and also to cultivate lands. Although the operations of the Company are for the purpose of the development of agriculture, it is still a commercial undertaking and the permission in favour of the Company to purchase the land can be granted by the Collector under the proviso to section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, and rule 25 thereunder.

Sd.....13/10.

Additional Secretary to Government .

U.R. to R.D.No. 17054/A, dated the 15th October 1952.

DYR.

25/6.

5a.

It does not appear necessary to discuss afresh the implications of the High Court decision in Civil Applications No. 274 of 1951 (Purushettam Mali's case). The combined effect of the High Court decision in Special Civil Application No. 1461 of 1952 and Special Civil Application No. 1651 of 1952 is that jurisdiction to entertain a revision application in proceedings under section 7 of the repealed Bombay Tenancy Act, 1939, vests only in the Bombay Revenue Tribunal and not in Government.

It may here be added that the view taken by the High Court affirms the view taken by the R.L.A. and the Advocate General from which the Bombay Revenue Tribunal differed.

Sd.....19/12.

Additional Secretary to Government.

U.R. to R.D.No. 21517/A, dated the 20th December 1952.

DYR.

25/6.

50.

Legal Department.

Bombay Tenancy
And Agricultural
Lands Act,
1948, Sec.
6(2).

The question raised for the R.L.A's consideration is whether under section 6, sub-section (2) of the Bombay Tenancy and Agricultural Lands Act, 1948, it would be possible for ^{the} Government to make an order fixing a lower rate of maximum rent applicable in the case of Backward Classes generally throughout the State without reference to particular areas.

2. Under section 6, sub-section (2) of the Bombay ~~Tenancy~~ Tenancy and Agricultural Lands Act, 1948, the State Government may, by notification in the Official Gazette, fix a lower rate of maximum rent payable by the tenants of lands situate in any particular area, or may fix such rate on any other suitable basis as it thinks fit. It is apparent from this provision that the lower rate of maximum rent that can be fixed would be with reference to the yielding capacity of the lands in any ~~an~~ particular area and not to the paying capacity of the tenant in any particular area and not ~~in~~ throughout the State. The proposal made by R.D. would not be legally feasible.

Ed.....21/11.

Additional Secretary to Government.

U.R. to R.D.No. 19499/A, dated the 21st November 1952.

DVR.

25/6. 50.

Bombay Tenancy
Act 1939.
Section 28.

Local Department.

In view of the decision of the High Court in Sp.Civil . Application No. 1651 of 1952 it would not be feasible for Government to interfere with the order of the Deputy Collector, Dhulia Division, dated the 21st July 1949 and that order would have to be allowed to stand as it is, Government having no revisional powers. The question raised for R.L.A.'s consideration does not, therefore, ~~not~~ survive.

Sd.....7/12.

Additional Secretary to Government.

U.R. to R.D., No. 20522/A, dated the 8th December 1952.

DYR.

25/8.

Se.

Bombay Tenancy
Agricultural
Lands Act, 1948.
Section 65
Palm tree planta-
tions.

The Director of Excise and Prohibition has proposed to cut down palm tree plantations in private survey numbers, the land wherein can be used for cultivation of foodgrains; and for that purpose to assume management of such lands under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948, on the ground that they have remained fallow for more than two years. The question raised for R.L.A.'s consideration is whether this proposal would be legally feasible.

2. Before any action can be taken under section 65 of the Act it is essential that the land has remained uncultivated for more than two consecutive years. "To cultivate" means to carry on any agricultural operation (see section 2(5) and "agriculture" includes horticulture, the raising of crops, grass, garden produce, dairy-farming, poultry farming, stock breeding and grazing but does not include cutting of wood only. (See section 2(1) . The following description has been stated about "palm" in Webster's New Dictionary at page 1759: .

" Any monocotyledonous plant of the family of *Arecaeae* The wood of a palm stems, being without a definite cambium ring is incapable of secondary growth. The leaves are either pinnate or palmately cleft. The small flowers are borne in huge clusters, subtended by a spathe, the fruit varies greatly in size and structure, a date and coconut well illustrate two extremes. Palms are the most important and valuable economic plants of the tropics and their products are widely used in the arts; The trunks and leaves are used

in building and thatching, the leaf sheaths, in the manufacture of boxes, wrapping etc., sugar and wine are made from the sap, the fruit is often used for food, and the seeds of many species yield valuable oils, and fats. Wax and sage are occasional products, nearly all palms are ornamental in cultivation etc."

It is clear from this description that the plantation of palm trees would amount to cultivation of the land for raising garden produce within the meaning of agriculture as defined in section 2(1) of the Act. The remark of the Director of Excise and Prohibition that these trees are of no use since they are not tapped for drawing toddy in view of the prohibition policy of Government overlooks the other produce that a palm tree yields. It cannot be said that the lands having a plantation of palm trees remain "uncultivated" within the meaning of section 65 of the Act. Under section 40 of the Bombay Land Revenue Code the rights in these trees have been conceded to the occupant of the land on which such trees stand. Section 19 of the Bombay Tenancy and Agricultural Lands Act entitles a tenant to the produce of the trees planted by him on any land leased to him, and under section 20 the tenant shall be entitled to two thirds of the produce of naturally growing trees, the landlord being entitled to the remaining one third. Thus the tenant and the landlord, as the case may be, have been statutorily guaranteed the produce of such trees and any interference with these rights as is proposed would be unwarranted. The action proposed by the Director of Excise and Prohibition either for taking over the

management of the land or cutting down the
palm trees therein would not be legally
feasible.

Sd.....19/12. .

Additional Secretary to Government.

U.R. to R.D.No. 21524/A, dated the 20th December 1952.

DYR.

25/6.

5c.

The question is primarily one of the policy. Government may first come to a decision whether they are agreeable to allow lawyers to appear in these proceedings. If Government are agreeable, then there would be hardly any justification for making a distinction between Advocates and Pleaders. & If on the other hand Government are on principle not agreeable- and I may point that even in Great Britain recently lawyers have been excluded from certain kinds of specialised administrative tribunals- then we can write to the High Court that Advocates have been permitted to appear because the law authorises them to do so and not because of any distinction between Advocates and Pleaders, and that Government do not propose to extend that privilege to Pleaders also.

Sd.....12/11.

Remembrancer of Legal Affairs.

DYR.

25/6.

5c.

As pointed out by the Solicitor in his note on page 143 the Order of Government dated 29th ~~Mr~~ January 1951 on page 103 ante under which the landlord was requested to give an undertaking for reimbursing the money which the tenant had spent on the land and if the landlord failed to do so, the tenant should be put in possession of the land with permission to remove crops for the current year cannot be supported under the provisions of the Tenancy Act. The assumption of the management of the land in question and its consequential leasing out is mainly due to the mischief played by the Talathi. The present case,, therefore, is of a peculiar nature and is not likely to recur again. It would not hterefere be desirable or expedient to amend the Act to provide for cases like the present case, Moreover as already pointed out by L.D. on p.144 ante, the plaintiff landlord cannot be made to pay compensation to the temporary tenant for the alleged improvements made by him.

2. The proper course therefore appears to be to issue a circular order emphasising on the Revenue Officers the significance and importance of the inquiries and reports for the purpose of section 65 of the Bombay Tenancy Act and giving detailed instructions for making such inquiries and reports.

Sd.....29/11.

Additional Secretary to Government.

December

U.R. to R.D.No. 20214/B, dated the 2nd November 1952.

DYR.

25/6. 5a.